

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of) CC Docket No. 94-11
)
TELEPHONE AND DATA SYSTEMS,) File No. 10209-CL-P-715-B-88
INC.)
)
For facilities in the Domestic)
Public Cellular Telecommunications)
Radio Service on Frequency Block)
B, in Market 715, Wisconsin 8)
(Vernon), Rural Service Area)

DOCKET FILE COPY ORIGINAL

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

Portland Cellular Partnership ("PortCell"), Telephone and Data Systems, Inc. ("TDS"), and United States Cellular Corporation ("USCC"), by their attorneys, hereby notify the Presiding Judge that PortCell, TDS, and USCC have entered into a settlement agreement (the "Agreement") that will terminate the participation of PortCell in the proceeding designated concerning the award of a construction permit to provide cellular service on the wireline block of frequencies in the Wisconsin 8-Vernon RSA (the "RSA"), CC Docket No. 94-11 (the "Proceeding"). Pursuant to new Section 22.129, formerly Section 22.936 of the FCC's Rules, 47 C.F.R. § 22.936(b), PortCell, TDS and USCC (the "Settling Parties") jointly request that the Agreement be approved. In support of these actions, the Settling Parties state as follows:

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The Settling Parties have entered into the Agreement, a copy of which is attached hereto as Exhibit 1. Pursuant to the Agreement, PortCell will withdraw from the Proceeding and terminate its prosecution of the issues designated in the Proceeding. In return, TDS and USCC have agreed to reimburse PortCell in an amount equal to its legitimate and prudent legal expenses incurred in preparing and prosecuting its claims in the Proceeding, including its intervention in that Proceeding. The amount of PortCell's expenses to be reimbursed is set forth in the Agreement, Exhibit 1 hereto, and supported by the declaration submitted by PortCell, attached hereto in Exhibit 2.

The reimbursement proposed pursuant to the Agreement is in the public interest and complies with the FCC's Rules and Policies. Commission policy strongly favors settlement among parties to contested proceedings. As a result of the settlement, PortCell will withdraw from the Proceeding. The withdrawal of PortCell will simplify the conduct of the Proceeding and conserve the resources of the Presiding Judge and the Commission.

The transactions proposed in the Agreement comply with the FCC's rules. Section 22.129, formerly Section 22.936, was adopted to prevent the payment of "greenmail" to parties merely speculating in litigation over cellular lotteries and to discourage thereby the filing of frivolous pleadings. See Third Report and Order, 7 FCC Rcd. 7183 (1992). The reimbursement contemplated in the Agreement is wholly consistent with the FCC's

rules, which permits a payment to PortCell for the withdrawal of its intervention in an amount equal to its legitimate and prudent expenses in prosecuting the issues in the Proceeding.

FOR THE FOREGOING REASONS, the Settling Parties request that the Presiding Judge grant the Joint Request and approve the Agreement.

Respectfully submitted,

PORTLAND CELLULAR PARTNERSHIP

By: 

Michael B. Barr
Robert W. Hawkins

Hunton & Williams
2000 Pennsylvania Ave, NW
Suite 9000
Washington, DC 20006

TELEPHONE AND DATA SYSTEMS, INC.

By: 

Nathaniel F. Emmons
Andrew H. Weissman

Mullin, Rhyne, Emmons, and Topel, P.C.
1225 Connecticut Ave., - Suite 300
Washington, DC 20036-5383
(202) 659-4700

UNITED STATES CELLULAR CORPORATION

By: 

R. Clark Wadlow
Mark D. Schneider

Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006
(202) 736-8000

Dated: March 8, 1995

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of ~~February~~ ^{March} 3, ^{wrk} 1995, among Telephone and Data Systems, Inc. ("TDS"), United States Cellular Corporation ("USCC") and Portland Cellular Partnership ("PortCell").

WHEREAS, TDS, USCC and PortCell are involved in a proceeding before the Federal Communications Commission (the "FCC"), captioned In re Application of Telephone and Data Systems, Inc. (CC Docket No. 94-11), referred to herein as the "Wisconsin 8 Proceeding", and Northeast Cellular Telephone Company, L.P. ("Northeast") and PortCell are involved in a proceeding before the FCC captioned (a) In re Application of Northeast Cellular Telephone Company, L.P. (File No. 27488-CL-P-152-B-86) (the "Northeast Proceeding") and (b) In re Application of Portland Cellular Partnership (File No. 27414-CL-P-152-B-86) (the "PortCell Proceeding").

WHEREAS, TDS, USCC and PortCell desire to enter into this Agreement to settle and to resolve PortCell's participation in the Wisconsin 8 Proceeding.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. FCC Proceedings. The parties agree to prepare and to file with the FCC within five days of the execution of this Settlement Agreement, and to prosecute expeditiously, a joint request (the "Joint Request") for FCC approval or consent to this Settlement Agreement (the "FCC Consent").

2. PortCell's Withdrawal.

(a) PortCell agrees, concurrently with the filing of the Joint Request, to file its withdrawal as a party to the Wisconsin 8 Proceeding, contingent upon the finality of the FCC Consent. PortCell further agrees that it will not permit its counsel to represent any other party in the Wisconsin 8 Proceeding. If TDS, USCC and the staff of the Wireless Telecommunications Bureau shall agree to a curtailment or termination of that proceeding, PortCell agrees not to oppose any such agreement. Prior to the approval of the Joint Request, PortCell shall refrain from taking any actions relating to the Wisconsin 8 Proceeding.

(b) PortCell agrees that, contingent upon the finality of the FCC Consent, PortCell will not in the future challenge the qualifications of TDS or its subsidiaries to be licensees of the FCC based on the decision in or facts underlying the La Star Proceeding, CC Docket No. 90-257 provided, however, that this subsection does not preclude PortCell from challenging, or limit the grounds on which PortCell may challenge, the qualifications

or eligibility of Northeast and successors in the Northeast Proceeding or the PortCell Proceeding.

3. Reimbursement of PortCell's Expenses. In consideration for the dismissal of its intervention in the Wisconsin 8 Proceeding and its agreement to terminate its prosecution of the issues designated in the Wisconsin 8 Proceeding, within five business days of issuance of the FCC Consent and the dismissal of PortCell from the Wisconsin 8 Proceeding (the "Dismissal") by Final Order, TDS and USCC agree to pay to PortCell, by wire transfer or delivery of a check, the sum of \$38,177.87, which TDS and USCC understand to be PortCell's legitimate and prudent expenses in preparing and prosecuting the issues designated in the Wisconsin 8 Proceeding. The FCC Consent and the Dismissal shall be deemed to be issued by Final Order at such time as they are no longer subject to administrative or judicial review.

4. Notices. All notices, requests, demands and other communications related to this Agreement shall be in writing and shall be deemed to have been duly given and effective (i) upon receipt if delivered in person, by cable, telecopier or telegram, (ii) one business day after deposit prepaid with a national overnight express delivery service (e.g., Federal Express or Airborne), or (iii) three business days after deposit in the United States Mail (registered or certified mail, postage prepaid, return receipt requested):

If to TDS: Telephone and Data Systems, Inc.
30 North LaSalle Street
Suite 4000
Chicago, Illinois 60602
Attention: Mr. LeRoy T. Carlson, Sr.

with a copy to: Sidley & Austin
One First National Plaza
Chicago, Illinois 60603
Attention: Michael G. Hron, Esq.

If to PortCell: Portland Cellular Partnership
d/b/a Maine Cellular Telephone Company
P.O. Box 3038
~~Ash~~ Auburn, Maine 04212
Attention: William Kowalczyk, General
Manager

with a copy to: Hunton & Williams
2000 Pennsylvania Avenue, N.W.
Suite 9000
Washington, DC 20006
Attention: Robert W. Hawkins, Esq.

5. Amendments. This Agreement may be amended or modified only by a written instrument executed by the parties hereto.

6. Governing Law. The rights and obligations of the parties under this Agreement shall be construed under and governed by the laws of the State of Delaware. If it becomes necessary to interpret or enforce any of the provisions of this Agreement, it is the intent of all parties that the laws of the State of Delaware (excluding principals and provisions related to conflicts of laws or choice of laws) shall apply.

7. Binding Effect; Assignability. This Agreement, including the documents executed pursuant hereto, shall bind and inure to the benefit of the parties hereto and their respective

representatives, receivers, trustees, successors, transferees and assigns.

8. Cooperation and Execution of Documents. The parties agree to execute and deliver properly and promptly any and all additional documents that may be necessary to render this Agreement and the documents to be executed pursuant hereto legally and practically effective. This paragraph shall not require the execution of any document that expands, alters or in any way changes the terms of this Agreement.

9. Entire Agreement. This Agreement and the documents executed pursuant hereto constitute the entire understanding between the parties governing the matters addressed herein. No prior agreement or representation, whether oral or written shall have any force or effect thereon.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. No Admission. It is understood and agreed that this Agreement, the exhibits hereto, all consideration given or accepted in connection with the agreements, and the covenants made herein, are all made, given and accepted in settlement and

compromise of disputed claims and are not an admission of liability by anyone.

12. Termination. Either TDS and USCC or PortCell shall have the right to terminate this Agreement, by written notice to the other, in the event that the FCC Consent has not become final, at any time after June 30, 1995.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first written above.

PORTLAND CELLULAR PARTNERSHIP

By: William Kowalysz
Dated: March 3, 1995

TELEPHONE AND DATA SYSTEMS, INC.

By: _____
Dated: _____

UNITED STATES CELLULAR CORPORATION

By: _____
Dated: _____

Signature Page to Settlement Agreement

compromise of disputed claims and are not an admission of liability by anyone.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first written above.

PORTLAND CELLULAR PARTNERSHIP

By: _____
Dated: _____

TELEPHONE AND DATA SYSTEMS, INC.

By: Le Roy T. Carlson
Dated: February 14, 1995

UNITED STATES CELLULAR CORPORATION

By: _____
Dated: _____

Signature Page to Settlement Agreement

compromise of disputed claims and are not an admission of liability by anyone.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first written above.

PORTLAND CELLULAR PARTNERSHIP

TELEPHONE AND DATA SYSTEMS, INC.

By: _____
Dated: _____

By: _____
Dated: _____

UNITED STATES CELLULAR CORPORATION

By: W. Donald [Signature]
Dated: 2/14/95

Signature Page to Settlement Agreement

DECLARATION OF WILLIAM KOWALCZYK
ON BEHALF OF PORTLAND CELLULAR PARTNERSHIP

I, William Kowalczyk, General Manager of Portland Cellular Partnership ("PortCell") do hereby declare the following:

1. Neither PortCell nor its affiliates, nor its principals, has received or given or will receive or give any consideration, other than that specified in the Settlement Agreement filed herewith between PortCell, Telephone and Data Systems, Inc. ("TDS") and United States Cellular Corporation ("USCC"), for the withdrawal of its participation or any pleadings filed in CC Docket 94-11, the proceeding concerning the award to TDS of the license for the Wisconsin 8-Vernon RSA (the "Proceeding").

2. No oral agreements exist relating to the withdrawal of PortCell's participation or any pleadings filed in the Proceeding other than as described in the Settlement Agreement.

3. PortCell has expended \$38,177.87 in legitimate and prudent expenses in prosecuting the issues designated in the Proceeding. These expenses include \$37,177.87 to the law firm of Hunton & Williams and \$1,000 to the law firm of Verrill & Dana. A brief summary of the expenses incurred by PortCell in connection with its prosecution of the issues designated in the Proceeding is attached to this declaration as Exhibit A.

4. PortCell did not intervene in the Proceeding in an effort to achieve the instant Settlement.

I hereby certify, under penalty of perjury, that the foregoing Declaration is true and correct to the best of my knowledge and belief.



William Kowalczyk, General Manager
Portland Cellular Partnership

Dated: March 3, 1995

EXHIBIT A

The bulk of expenses incurred by PortCell in connection with prosecution of the issues in the Wisconsin 8 Proceeding were legal fees for the following activities:

- Consultations with representative of PortCell and between counsel regarding intervention in Wisconsin 8 proceeding.
- Preparation and filing petition to intervene and related pleadings in Wisconsin 8 proceeding.
- Attendance at prehearing conference and a hearing in Wisconsin 8 proceeding.
- Review of decisions and filings in the La Star proceeding.
- Review of filings in the Wisconsin 8 proceeding.
- Attendance at discovery conference.
- Participation in discovery (review of documents and preparation for and attendance at depositions).
- Periodic conferences with other counsel in the Wisconsin 8 proceeding and reports to client.
- Review of Bill of Particulars.
- Negotiation and documentation of settlement agreement.

In addition to legal fees, PortCell incurred other expenses including long-distance telephone charges, copying charges, courier charges, and fax charges.

DECLARATION OF LEROY T. CARLSON, SR.
ON BEHALF OF TELEPHONE AND DATA SYSTEMS, INC.


I, LeRoy T. Carlson, Sr., an authorized representative of Telephone and Data Systems, Inc. (TDS") do hereby declare the following:

1. Neither TDS nor its principals has received or given or will receive or give any consideration for the settlement with Portland Cellular Partnership ("PortCell") and for its withdrawal of its participation and pleadings in CC Docket 94-11, other than as described in the Settlement Agreement between PortCell, TDS and United States Cellular Corporation.

2. No oral agreements exist relating to the withdrawal of PortCell's participation or pleadings filed in CC Docket 94-11, other than as described in the Settlement Agreement.

I hereby certify, under penalty of perjury, that the foregoing Declaration is true and correct to the best of my knowledge and belief.

Date: February 14, 1995


LeRoy T. Carlson, Sr.
Chairman

**DECLARATION OF H. DONALD NELSON
ON BEHALF OF UNITED STATES CELLULAR CORPORATION**

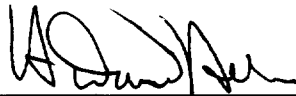
I, H. Donald Nelson, an authorized representative of United States Cellular Corporation ("USCC"), do hereby declare the following:

1. Neither USCC nor its principals has received or given or will receive or give any consideration for the settlement with Portland Cellular Partnership ("Portland") and for its withdrawal of its participation and pleadings filed in CC Docket 94-11, other than as described in the Settlement Agreement between PortCell, USCC and Telephone and Data Systems, Inc. ("TDS").

2. No oral agreements exist relating to the withdrawal of PortCell's participation or pleadings filed in CC Docket 94-11, other than as described in the Settlement Agreement.

I hereby certify, under penalty of perjury, that the foregoing Declaration is true and correct to the best of my knowledge and belief.

Date: 2-14-95



H. Donald Nelson
President

Certificate of Service

I, Gayle C. Kosarin, hereby certify that on this 8th day of March, 1995, copies of the foregoing Joint Request were served via first class, postage-paid United States mail on the following:

*The Honorable Joseph P. Gonzalez
Federal Communications Commission
Common Carrier Bureau
2000 L Street, NW
Room 221
Washington, DC 20554

*Joseph P. Weber
Wireless Telecommunications Bureau
Federal Communications Commission
1919 M Street, NW
Room 644
Washington, DC 20554

L. Andrew Tollin
Luisa L. Lancetti
Wilkinson Barker Knauer & Quinn
1735 New York Ave., N.W.
Suite 600
Washington, DC 20006

James A. Kirkland
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo
701 Pennsylvania Ave., NW
Suite 900
Washington, DC 20004

William H. Crispin
Verner Liipfert Bernhard
McPherson & Hand
901 15th Street, NW
Suite 4401
Washington, DC 20005

Kenneth E. Hardman
Moir & Hardman
2000 L Street, NW
Suite 512
Washington, DC 20036

Gayle C. Kosarin

*By Hand